



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RP, PSF, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notices"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 20, 2016 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his advocate, KS (collectively "landlord") and the two tenants, "male tenant" and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 65 minutes in order to allow both parties, particularly the two tenants, to fully present their submissions. The majority of the hearing time was used by the parties to negotiate a settlement of this matter, which was ultimately unsuccessful.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the

landlord was duly served with the tenants' Application and the tenants were duly served with the landlord's written evidence package.

The landlord only issued the 1 Month Notice in the name of the male tenant. The male tenant confirmed receipt of the landlord's 1 Month Notice on February 20 or 21, 2016, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the male tenant was duly served with the landlord's 1 Month Notice.

At the outset of the hearing, the tenants confirmed that they were not pursuing the other relief sought in their Application, aside from cancelling the 1 Month Notice and recovering the filing fee. The tenants confirmed that they had already applied for and received a decision from a different Arbitrator regarding a rent reduction and orders for the landlord to complete repairs and to provide services or facilities at a "previous hearing," on March 8, 2016, the file number which appears on the front page of this decision. The tenants also confirmed that the 10 Day Notices issued by the landlord were from 2014 and 2015 and the tenants were beyond the deadlines to apply to cancel them but the landlord had continued the tenancy. Accordingly, the tenants' Application for cancellation of the 10 Day Notices, a reduction in rent, and orders for the landlord to complete repairs and to provide services or facilities, are dismissed without leave to reapply.

During the hearing, the landlord made an oral request for an order of possession.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on January 15, 2012 with the male tenant only and the female tenant moved in around April 2014. Both parties agreed that monthly rent in the amount of \$1,400.00 is payable on the 16th day of each month. Both parties agreed that a security deposit of \$700.00 was paid by the male tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing and only the male tenant is named as a tenant on the agreement. The tenants continue to reside in the rental unit.

The tenants seek to cancel the landlord's 1 Month Notice. The landlord issued the 1 Month Notice, indicating that "the tenant is repeatedly late paying rent." The notice indicates an effective move-out date of March 20, 2016. Both parties agreed that the tenants paid rent late more than three times during this tenancy. The tenants said that most of the time, they only paid rent 24 to 48 hours late. Both parties agreed that at the time of the hearing on April 14, 2016, the tenants had not yet paid rent for April 16 to May 15 yet, as rent was not yet due.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant receives the notice. The male tenant received the 1 Month Notice on February 20 or 21, 2016, and the tenants filed their Application on February 25, 2016. Therefore, the male tenant is within the ten day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. Both parties agreed that rent is due on the 16th day of each month, as per the tenancy agreement. Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." Both tenants acknowledged verbally during the hearing that their rent was late more than three times during this tenancy.

The landlord also provided documentary evidence showing the return of the tenants' rent cheques for insufficient funds, interac e-transfer documents showing the late payment of rent after the 16th day of various months, and text messages between the parties regarding late payment of rent. The tenants' own written evidence and statements submitted with their Application acknowledged that they paid rent late a number of times during this tenancy. I find that the tenants' late payment of rent occurred prior to the rent reduction granted by the Arbitrator at the previous hearing.

Accordingly, I find that the tenants were late paying rent at least three times during this tenancy. I find that the landlord's 1 Month Notice was issued for a valid reason. The tenants' application to cancel the landlord's 1 Month Notice is dismissed without leave to reapply. As I have dismissed the tenants' application, the landlord is entitled to an order of possession pursuant to section 55 of the *Act*, as the landlord's 1 Month Notice complies with section 52 of the *Act*.

I find that this tenancy ends on April 16, 2016, the corrected effective date of the 1 Month Notice, as per section 53(3) of the *Act*. The landlord must serve the notice on the day before rent is due, so in this case it should have been served by February 15 to be effective by March 16, 2016. As the landlord issued the notice after February 15, the notice is not effective in March, as it is not one full month's notice. The notice is effective as of April 16, 2016.

I issue an **Order of Possession to the landlord effective ten (10) days after service on the male tenant**, as the male tenant was the only tenant named in the landlord's 1 Month Notice. However, the **order of possession is effective against the male tenant and all occupants in the rental unit, including the female tenant and the tenants' children**. I allow the tenants more time to vacate than the two day order of possession because they identified disability issues and a difficulty in moving due to their small children. Should the male tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the tenants were unsuccessful in their Application, they are not entitled to recover the \$100.00 filing fee from the landlord. The tenants must bear the cost of this fee.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective ten (10) days after service on the male tenant. Should the male tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2016

Residential Tenancy Branch